

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7331 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PARMESHWAR NARAYAN

Versus

COLLECTOR

Appearance:

MR DS VASAVADA for Petitioner

MR SS PATEL,AGP for Respondent No. 1

SINGHI & BUCH ASSO. for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/06/1999

ORAL JUDGEMENT

1. The petitioner in this petition under Article 226 of the Constitution of India has prayed to direct the Collector, Ahmedabad to initiate proceedings under the Bombay Land Revenue Code against the respondent no.2 in pursuance of the recovery certificate issued by the Labour Court dated 27.4.1998 at Annexure A.

2. It is the case of the petitioner that he has discharged duties in the office of the respondent no.2 from December 1986 to January 1988 and during that period, even though the Company had declared lock out, the petitioner was called to attend the duty. The petitioner worked as a Steno Secretary to the Management of respondent no.2. Since the petitioner was not paid the amount of wages due, he filed Recovery Application No.3121 of 1990 in the Labour Court, Ahmedabad, which was allowed by the Labour Court by its order dated December 2, 1997 and the respondent no.2 was directed to pay the amount of Rs. 74,212/- and in addition, an amount of Rs.250/- by way of costs. Since all the attempts made by the petitioner to get the amount failed, the petitioner obtained recovery certificate from the Labour Court with directions to recover the amount under the provisions contained in the Bombay Land Revenue Code. The petitioner issued notice to the respondent no.1 dated 11.7.1998 with a request to initiate proceedings against respondent no.2. However, the respondent no.1 failed to initiate proceedings to recover the amount and hence the petitioner has approached this Court by way of this petition.

3. On behalf of the respondent no.1, Mr.R.K.Damor, In-charge Mamlatdar has filed an affidavit-in-reply. Reading the same, it appears that even though the recovery proceedings were initiated by respondent no.1, stand taken by the respondent no.2 Company in the said proceedings is that the Company has applied under the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA" for short) being Reference No. 32 of 1998, under the provisions of section 22(1) of the said Act, no proceedings for recovery of money against the company shall lie or to be proceeded further except with the consent of the Board for Industrial & Financial Reconstruction ("BIFR" for short). In substance, in pursuance of the provisions of section 22, the respondent no.1 has not proceeded further against the respondent no.2 for enforcement of the order passed by the Labour Court. It further appears that in view of the subsequent development that the respondent no.2-Company has been declared a sick unit by BIFR, the respondent no.1 has stopped proceeding further against the respondent no.2.

4. The respondent no.2- Company in its affidavit-in-reply has taken a stand that under the provisions of section 22(1) of SICA, recovery of money claimed cannot be effected.

5. Mr.D.S.Vasavda, learned advocate appearing for the petitioner submitted that admittedly the petitioner has worked with the respondent no.2 Company and, therefore, he is entitled to get his due wages from the respondent no.2. In the submission of Mr.Vasavda, the just claim of the petitioner with regard to wages cannot be defeated on the basis of provisions of section 22 of SICA.To substantiate this submission, reliance is placed on the decision of this Court in the case Rajnagar Textile Mills Vs. Textile Labour Association, 1998(2) GLH 15. This Court, in the said case, after interpreting section 22 of SICA has held that in the context of the word "proceedings" under section 22, cases relating to recovery of wages stand on entirely different pedestal and there can be no embargo to such recovery by virtue of section 22.

6. Mr.M.B.Buch, learned advocate appearing for the respondents,however, tried to distinguish the decision rendered in Rajnagar Textile Mills (supra) while contending that it was a case when the TLA had filed an application under section 79(1) of the Bombay Industrial Relations Act against the Company for declaration that the action of the Mill- Company in respect of loss of wages by the members of TLA be declared illegal being in breach of the agreement between the parties and the Mill-Company be directed to make good the monetary loss on account of not giving them employment as per the agreement. The Labour Court allowed the application and declared that the Company had committed breach of the agreement and accordingly the Mill-Company was directed to make good the monetary loss caused on account of the illegal act of the Mill- Company and further direction was given to give work as per the agreement. Mr. Buch, therefore, submitted that the present case being the case of execution of the order passed in recovery application, section 22 would bar such recovery. In substance, it was contended that the certificate issued amounted to distress proceedings which were not permissible in view of the provisions of section 22 of SICA.

7. In order to appreciate the rival contentions,it is necessary to consider the provisions of section 22 of SICA which provide for suspension of legal proceedings, contracts etc. The said section reads as under:-

"22. Suspension of legal proceedings, contracts,
etc.

(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation

or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956(1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

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The plain reading of section 22 makes it clear that the proceedings for winding up of the industrial company or for execution of distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for recovery of money or for enforcement of security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further except with the consent of the Board or as the case may be the Appellate Authority. It is also explicitly clear that section 22 bars the execution of distress proceedings or the appointment of receiver in respect of the property of the company. The recovery of money or for enforcement of any security against the company or any guarantee in respect of any loan or advance guaranteed to the company cannot be resorted to by way of a suit in a Civil Court. The word "distress" used in the aforesaid section is not intended to be made the basis for depriving workmen of the recovery of their wages payable to them under the Act. It is not in dispute that in the present case, the workman had applied for recovery of his dues under section 33(C)(2) of the Industrial Disputes Act, 1947. Section 33(C) provides method by which the workman can claim money which is due from the employer. Thus, the word "distress" used in section 22 is required to be construed so as not to deprive the wages earned by the

workmen from their employer. Any narrow meaning to the word "distress" given excluding the wages would tantamount to defeating the purpose for which the Industrial Disputes Act is enacted. I am fortified in my view by the decision of the Division Bench of Karnataka High Court in the case of Indian Plywood Mfg. Co. Vs. Commissioner of Labour and ors., 1999(1) LLJ 411. The Division Bench in the said case, while considering the provisions of section 33(C)(2) of the Industrial Disputes Act and section 22 of SICA, has laid down that the application under section 33(C)(2) of the Industrial Disputes Act for retrenchment compensation is no bar for the authorities under the Industrial Disputes Act to proceed notwithstanding the provisions of section 22 of SICA. The provisions of the Industrial Disputes Act cannot be controlled or intended to have been curtailed by incorporation of section 22 of SICA. The provisions of the Industrial Disputes Act and that of SICA nowhere come in conflict as they are intended to deal with different situations. In this view of the matter, it is not possible for me to accept the submission made by Mr. Buch on behalf of respondent no.2.

8. Mr. Vasavda, learned advocate for the petitioner, by producing the minutes recorded by the Bench of BIFR submitted that the Bench has in fact clarified that it was not restraining or staying the payment of workers and, therefore, the petitioner is entitled to get his dues and, therefore, in any case, it is not open for the respondent- Company to plead bar of section 22 of SICA.

9. Having gone through the proceedings recorded by the Bench of BIFR, it is clear that the Bench of BIFR, while considering the representation made on behalf of the Company as well as the Employees' Union, in para 14, has stated in no uncertain terms that it was not restraining or staying the payment of workers dues and the directions given by the High Court have to be honoured. May be such directions may have been given in pursuance of the dispute against the respondent no.2 by the workers of its other units. However, the fact remains that the Bench of BIFR has clarified that it was not restraining or staying the payment of workers dues and that it is not open for the respondent no.2 to take shelter of section 22 of SICA.

10. Considering the matter from all angles, I am of the opinion that the petition is required to be allowed and the petitioner is entitled to get due wages from respondent no.2 as per the order passed in recovery application and the certificate issued thereafter by the

Labour Court, Ahmedabad.

11. The petition is accordingly allowed. The respondent no.1 is directed to initiate proceedings under the Bombay Land Revenue Code in pursuance of the certificate dated 7.4.1998 at annexure B to the petition and to complete the same as expeditiously as possible and in any case, not later than 30.9.1999. Rule is made absolute accordingly with costs.

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